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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF435

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training Activities in the Gulf of Alaska Temporary Maritime Activities Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notice is hereby given that a Letter of Authorization (LOA) has been issued to the U.S. Navy (Navy) to take marine mammals incidental to Navy training activities conducted in the Gulf of Alaska (GOA) Temporary Maritime Activities Area (Study Area). These activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act of 2004 (NDAA).

DATES: Effective from April 26, 2017 to April 26, 2022.

ADDRESSES: The LOA and supporting documents may be obtained online at:

www.nmfs.noaa.gov/pr/permits/incidental/military.htm. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jolie Harrison or Stephanie Egger, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term “take” means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. We, NMFS, have been delegated the authority to issue such regulations and Authorizations.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA): “(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant); and, if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to,

and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Regulations governing the taking of individuals of 19 species of marine mammals, representing 27 stocks, by Level B harassment and one species of marine mammal (Dall’s porpoise) by Level A harassment incidental to Navy training activities in the GOA Study Area are in effect from April 26, 2017 through April 26, 2022 (82 FR 19530, April 27, 2017) and are codified at 50 CFR Part 218, Subpart P. The regulations include mitigation, monitoring, and reporting requirements. Pursuant to those regulations, NMFS issued a five-year LOA for the incidental take of marine mammals during training activities in the GOA Study Area on April 26, 2017. For detailed information on this action, please refer to the April 27, 2017 **Federal Register** notice and 50 CFR Part 218, Subpart P.

Summary of Request

On July 28, 2014, NMFS received an application from the Navy requesting regulations and a subsequent LOA for the take of 19 species of marine mammals, representing 27 stocks, incidental to Navy training activities to be conducted in the GOA Study Area over 5 years. On October 14, 2014, the Navy submitted a revised application to reflect minor changes in the number and types of training activities. To address minor inconsistencies with the draft Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement (DSEIS/OEIS), the Navy submitted a final revision to the application on January 21, 2015. In November 2016, the Navy requested that the final rule and LOA be issued for the training activities addressed by Alternative 1 of the Final Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement (FSEIS/OEIS). The Navy’s application was based on the training activities addressed by Alternative 2 of the DSEIS/OEIS; therefore,

our proposed rule (81 FR 9950; February 26, 2016) analyzed the level of activities as described by Alternative 2. Pursuant to the Navy's November 2016 request, the final rule (82 FR 19530; April 27, 2017) reflects the training activities addressed by Alternative 1 of the FSEIS/OEIS, which include a subset of the activities analyzed in the proposed rule. The change from Alternative 2 to Alternative 1 results in a significant reduction in proposed training activities (*i.e.*, lessening the number of the Carrier Strike Group Events from 2 to 1 per year, and the number of SINKEXs from 2 to 0 per year, which means that several types of explosives will no longer be used and there will be no live MISSILEX). This significantly decreases the number of anticipated and authorized takes for this activity compared to what was presented in the proposed rule.

The Study Area is a polygon roughly the shape of a 300 nm by 150 nm rectangle oriented northwest to southeast in the long direction, located south of Prince William Sound and east of Kodiak Island, Alaska. The activities conducted within the Study Area are classified as military readiness activities. The final rule (82 FR 19530, April 27, 2017) and GOA FSEIS/OEIS include a complete description of the Navy's specified training activities incidental to which NMFS is authorizing take of marine mammals. Sonar use and underwater detonations are the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment.

Authorization

We have issued an LOA to the Navy authorizing the take of marine mammals by harassment incidental to training activities in the GOA Study Area, as described above. The level and type of take authorized by the LOA is the same as the level and type of take analyzed in the final rule (82 FR 19530, April 27, 2017). There are no mortality takes of any species predicted or authorized for any training activities in the GOA Study Area. Take of marine

mammals will be minimized through implementation of mitigation measures, including: pre-exercise visual or aerial monitoring during certain training activities; the use of lookouts to monitor for marine mammals and begin powerdown and shutdown of sonar when marine mammals are detected within ranges where the received sound level is likely to result in threshold shift or injury; use of exclusion zones that avoid exposing marine mammals to levels of explosives likely to result in injury or death of marine mammals; avoidance of marine mammals by vessels; limitation of activities in a North Pacific Right Whale “Cautionary Area;” and implementation of a stranding response plan, among others. The Navy is also required to comply with monitoring and reporting measures under 50 CFR 218.155. Additionally, the rule and LOA include an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. For full details on the mitigation, monitoring, and reporting requirements, please refer to the final rule (82 FR 19530; April 27, 2017).

Issuance of the LOA is based on findings, described in the preamble to the final rule, that the total taking of marine mammals incidental to the Navy’s training activities in the GOA Study Area will have a negligible impact on the affected marine mammal species or stocks and will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

The LOA will remain valid through April 26, 2022, provided that the Navy remains in conformance with the conditions of the regulations and the LOA, including the mitigation, monitoring, and reporting requirements described in 50 CFR Part 218, Subpart P and the LOA.

Dated: May 23, 2017.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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